

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.14.101, 12.14.105, 12.14.115,)
12.14.120, 12.14.125, 12.14.135,)
12.14.140, 12.14.150, 12.14.160 and)
12.14.165, regarding commercial use)
rules in Montana)

TO: All Concerned Persons

1. On August 27, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-351 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1436 of the 2009 Montana Administrative Register, Issue No. 16.

2. The commission has amended ARM 12.14.105, 12.14.115, 12.14.120, 12.14.125, 12.14.135, 12.14.140, 12.14.150, 12.14.160, and 12.14.165 as proposed.

3. The commission has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

ARM 12.14.101 DEFINITIONS

(1) through (11) remain as proposed.

(12) "Nonprofit organization" means an organization that ~~does not distribute its surplus funds to owners or shareholders and exists solely to provide programs and services that are of public benefit. While they are able to earn a profit, more accurately called a surplus, such earnings must be retained by the organization for its future provision of programs and services. Earnings may not benefit individuals or stake holders. Examples include charities and service organizations.~~ is officially registered as a 501(c)(3) tax exempt organization.

(13) through (19) remain as proposed.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

4. Simultaneous to the administrative rulemaking process the commission amended the commercial use permit commission fee rule. The commission received five comments on the commercial use administrative rules and the commission fee rule. We are only addressing the comments that deal with the commercial use administrative rules in this notice. The commission conducted one public hearing in Helena. Two people attended the hearing. No one provided testimony at the hearing.

Comment #1: A fishing outfitters association supported the proposed amendments to the rules. In particular the language allowing the department to establish a short-term fishing access site permit; definitions for outfitter and guide that are in line with Montana Board of Outfitters rules and laws; and the language providing added flexibility to adjust fees for community service groups, events, and nonprofits.

Response #1: The commission appreciates the support of the fishing outfitters association.

Comment #2: One person expressed concern about the lack of options to conduct commercial use on a restricted river where commercial use permits have been allocated based on historical use; in particular, the permit system on the Alberton Gorge. They referenced ARM 12.14.115(3) that states historical commercial use of a site does not convey a right to conduct commercial use in the future and that if it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site. They commented that this rule should also mean that the lack of historical use should not preclude future use.

Response #2: The commission's intention in this rule was to convey that historical use does not convey a right to conduct commercial use in the future. This rule also, as this comment suggests, allows the commission to allocate use whether or not historical use was conducted. However, on the Alberton Gorge, the commission has already determined, in a separate rulemaking process, the allocation of and rationing of use based upon historic use. Any changes to that permit system would occur in a separate rulemaking process.

/s/ Dan Vermillion

Dan Vermillion, Vice Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State November 16, 2009